

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**VS.**

**DALE L. STARRY,**

**Defendant.**

**CASE NO. 8:05CR416**

## TENTATIVE FINDINGS

The Court has received the Revised Presentence Investigation Report (“PSR”) and the Defendant’s objections thereto and request for a deviation (Filing No. 33). The government has adopted the PSR. (Filing No. 34.) See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

## OBJECTIONS

The Defendant objects to ¶¶ 68 and 73. The objections are discussed below.

### ¶ 68 - Statutory Range

The Defendant objects to the stated range, arguing that it should be 0-5 years. The PSR reads “0 to 5 years.” The objection is denied.

### ¶ 73 - Eligibility for Probation

The Defendant objects to the probation officer's assessment that under U.S.S.G. § 5B1.1(a) he is not eligible for probation. The objection is denied for the reason stated in the Addendum to the PSR.

**DEVIATION**

The Defendant's request for a deviation will be heard at sentencing.

IT IS ORDERED:

1. The Defendant's Objections to the Presentence Investigation Report (Filing No. 33) are denied;

2. Otherwise the Court's tentative findings are that the Presentence Investigation Report is correct in all respects;

3. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

4. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final;

5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing; and

6. The Defendant's request for a deviation (Filing NO. 33) will be heard at sentencing.

DATED this 21<sup>st</sup> day of September, 2006.

BY THE COURT:

S/ Laurie Smith Camp  
United States District Judge